

REQUEST FOR QUALIFICATIONS

RFx No. 3140000546

Smart No. 1450-16-R-RFQI-00008

**Gulf of Mexico Energy Security Act
Strategic Framework Plan for
Assessment, Development and
Implementation**

Mississippi Department of Marine Resources
1141 Bayview Avenue
Biloxi, Mississippi 39530

Contact: Erin Gallagher - Procurement@dmr.ms.gov

Introduction

The Mississippi Department of Marine Resources (MDMR) manages the coastal resources for the State of Mississippi through the authority of the Commission on Marine Resources. We are seeking sealed Statements of Qualifications (SOQs) to establish a contract with an individual, entity, or firm for a strategic framework plan for assessment, development and implementation of a comprehensive Gulf of Mexico Energy Security Act (“GOMESA”) Program for Mississippi.

GOMESA will generate billions of dollars in revenues for Mississippi from oil and gas production generated by the Outer Continental Shelf (OCS) in the Gulf of Mexico. These are revenues which bring another dimension to the State’s ongoing recovery and restoration efforts, but also create incredibly new opportunities to address additional economic, infrastructure, and natural resource objectives—if GOMESA dollars are appropriately planned, managed, and implemented.

This Program will ensure the establishment of a structure that optimizes opportunities enabled by GOMESA and could include: the formulation of Mississippi goals and objectives through a comprehensive planning process, the leveraging of funds to maximize revenue utilization, efficient application of resources, sound program management, and financial monitoring and oversight to ensure accountability.

A contract may be awarded to the individual, entity, or firm, whose SOQ is determined to be the most advantageous to the MDMR and the State of Mississippi. The contract amount will be negotiated with the respondent selected pursuant to this RFQ, but will not exceed \$75,000. The factors to be considered in the evaluation of submissions and their relative importance are set forth herein. The scope of work to be performed under the contract is also set forth herein.

Deadlines/Timeline

RFQ Issue Date:	April 15, 2016
Deadline for Questions to MDMR:	April 27, 2016 10:00 a.m. CST
Posting of Written Answers to Questions:	April 29, 2016 5:00 p.m. CST
SOQ Submission Deadline:	May 13, 2016 10:00 a.m. CST

How to Apply

Your Statement of Qualifications must be **received** by MDMR no later than **May 13, 2016, at 10:00 a.m. CST**. You may submit your SOQ electronically through the State of Mississippi MAGIC portal, or you may personally deliver or mail your SOQ to Erin Gallagher on the 6th floor, 1141 Bayview Avenue, Biloxi, Mississippi 39530. Remember, you are responsible for making sure your SOQ is received by the deadline. **SOQs received after the deadline will not be considered.** Instructions on how to submit you SOQ are set forth herein.

Scope of Work

A comprehensive GOMESA program can be effectively initiated through the development of a Strategic Framework Assessment. This Framework will provide the State an initial assessment that will ultimately serve as the foundation for a comprehensive, long-term restoration and protection program. The Framework is also intended to offer conceptual ideas and program objectives that will guide program development.

The scope of work for the contract will include, but is not limited to, the following:

- Establish the planning area, planning horizon, central themes, and long-term goals of the Mississippi GOMESA Program;
- Identification of stakeholder and other participants and identify their respective roles and responsibilities;
- Assess existing conditions and programs;
- Preliminary identification of goals and objectives. This will include the provision of project examples and initiatives that Mississippi GOMESA Program will pursue, and may include: infrastructure, economic development, storm protection and flood control, environmental, marine and wildlife habitat, conservation, navigation, and recreation;
- Recommended delivery mechanisms outlining suggested vehicles for major program components and characteristics for delivery of the program, including lead state agency and potential agency partners, possible legislative requirements, and a Master Plan for program implementation;
- Program management and financial oversight. This element will provide further detail regarding the components necessary for eventual program execution, including a Master Plan, public participation, pre-construction activities, program and construction management and implementation, and future planning and program management needs; and,
- Develop a final draft (in book/manual form, electronic format) of the GOMESA Strategic Framework Plan for Assessment, Development and Implementation for submission to the MDMR.

Minimum Qualifications

The minimum qualifications which the MDMR is seeking for this service include:

- Master's Degree or higher;
- Three years' experience in drafting strategic framework plans of comparable scope and complexity;
- Two professional references from clients for which the respondent has provided comparable services; and,
- Two examples of authored plans for programs of similar size and complexity to demonstrate technical capability.

Selection Process

An MDMR selection committee will review all SOQs which are completely and timely submitted. The SOQs of those respondents meeting the minimum qualifications set forth above will be evaluated by the committee which will select the most qualified respondent, subject to the approval of the MDMR Executive Director. The criteria and the level of importance associated with each criterion are:

- Education – up to 20 points
- Experience in drafting plans of a comparable scope – up to 30 points
- References – up to 15 points
- Technical capability– past performance of comparable work – up to 35 points

Total points possible: 100 points

Term of Contract

The start date for the contract is the date the contract is signed by the selected respondent and the Executive Director of the MDMR. The end date is one year, or 365 days, from the start date. The contract may be extended subject to the availability of funds and at the sole discretion of the MDMR with the agreement of the Contractor. Any contract renewal or extension shall be under the same prices, terms, and conditions as in the original contract, and shall be agreed to, in writing, by the MDMR and the Contractor.

MDMR Contact and Questions/Requests for Clarification

All questions and requests for clarification must be submitted by email to:

Erin Gallagher, Procurement Director
Procurement@dmr.ms.gov

All questions/requests for clarification must be received no later than April 27, 2016 at 10:00 a.m. CST.

All questions/requests for clarification and the answers thereto will be published on the MDMR website (<http://dmr.ms.gov>) and the MAGIC Portal (<http://www.mmrs.state.ms.us/vendors/index.shtml>) in a manner that all respondents will be able to view by April 29, 2016 at 5:00 p.m. CST.

The MDMR will not be bound by any verbal or written information that is not specified within this RFQ unless formally noticed and issued by the contact person.

Amendments to this RFQ

Should an amendment or amendments to this RFQ be issued by MDMR, it will be posted on the MDMR website (<http://www.dmr.ms.gov>) and on the Mississippi Contract/Procurement Opportunity Search Board (Procurement Portal) website (https://www.ms.gov/dfa/contract_bid_search/Bid) in a manner that all respondents will be able to view. **Furthermore, respondents must acknowledge receipt of any amendment to this RFQ by signing and returning the amendment with the SOQ, by identifying the amendment number and date in the space provided for this purpose on the SOQ Cover Sheet, or by letter.** The acknowledgment must be received by the MDMR by the time and at the place specified for receipt of SOQs. It is the respondent's sole responsibility to monitor the website for amendments to the RFQ.

How to Submit Your SOQ

You have the option of electronic registration in Mississippi's Accountability System for Government Information and Collaboration (MAGIC) and you may submit your SOQ electronically through MAGIC, or you may submit your SOQ by paper submission via mail or hand delivery to MDMR as outlined below:

SOQ SUBMISSION REQUIREMENTS

Vendor Electronic Registration in MAGIC (optional):

- It shall be the responsibility of each vendor to ensure that the respondent's profile is current in the MAGIC system. The website to register as a vendor with the State of Mississippi is: <http://www.mmrs.state.ms.us/vendors/index.shtml>.

- For online learning instructions on submitting your SOQ electronically, select “Supplier Training” from the link listed above. Select the LOG820 Supplier Self-Service Course link and then click “Launch Course.”
- If you have problems getting on the website, please contact the Mash Helpdesk at (601) 359-1343 or mash@dfa.ms.gov. You must receive a User ID and Password to access MAGIC’s portal. **This process could take up to 72 hours to complete.** You may also contact Erin Gallagher at (228) 523-4147 or email Procurement@dmr.ms.gov.

Electronic Submission in MAGIC (option)

- The Statement of Qualification must be submitted in MAGIC no later than 10:00 AM CST, May 13, 2016.
- Timely submission of the SOQ is the responsibility of the respondent. SOQs received after the specified time will be rejected and returned to the respondent unopened. **It is suggested that you allow 48 hours before the due date and time for submission of the SOQ in MAGIC, especially if you are a first-time user.**

Paper Submission Requirements (option)

The SOQ must be sealed and must contain the following:

- The SOQ must be signed and submitted in a sealed envelope or package to 1141 Bayview Avenue, Biloxi MS 39530 no later than 10:00 AM CST, May 13, 2016.
- Timely submission of the SOQ is the responsibility of the respondent. SOQs received after the specified time will be rejected and returned to the respondent unopened.
- The envelope or package must be marked with the SOQ opening date and time, and the number of the RFQ (May13, 2016, 10:00 AM CST; RFx No.3140000546; Smart No. 1450-16-RFQI-00008).
- The time and date of receipt will be indicated on the envelope or package by the MDMR staff.
- SOQs submitted via facsimile (faxes) will not be accepted. It is suggested that if a SOQ is mailed to MDMR, it should be posted in certified mail with a return receipt requested. MDMR will not be responsible for mail delays or lost mail.
- All SOQs submitted by hand delivery or mail shall become the property of the MDMR.
- Sealed SOQs should be mailed or hand delivered to and labeled as follows:

“Gulf of Mexico Energy Security Act Framework Assessment”

RFx No. 3140000546
Smart No. 1450-16-RFQI-0008
Opening Date: 10:00 AM CST, May 13, 2016
Mississippi Department of Marine Resources
Attention: Erin Gallagher
1141 Bayview Avenue
Biloxi MS 39530
SEALED STATEMENT OF QUALIFICATIONS - DO NOT OPEN

Requirements for Statements of Qualifications

All Statement of Qualifications shall contain the following minimum information:

- Attachment A – SOQ Cover Sheet (including Resume(s), Certificate of Good Standing from Mississippi Secretary of State (if applicable), and Two Examples of Authored Plans)

Each page of the SOQ and all attachments must be identified with the name of the respondent. Modifications or additions to any portion of Attachment A may be cause for rejection of the SOQ.

The MDMR reserves the right to select any responsive Statement of Qualifications, pursuant to the evaluation criteria contained herein, as a basis for negotiation, to reject all SOQs not meeting minimum requirements, and to exercise its discretion and apply its judgment with respect to any SOQ submitted. The MDMR reserves the right to decide, on a case-by-case basis, whether to reject an SOQ with modifications or additions as nonresponsive. As a precondition to SOQ acceptance, the MDMR may request the respondent to withdraw or modify any portion of the SOQ deemed nonresponsive that does not affect quality, quantity, or delivery of the service. Any respondent claiming that its SOQ contains information exempt from the Mississippi Public Records Act (Miss. Code Ann. § 25-61-1, *et seq.*), shall segregate and mark the information as confidential and provide the specific statutory authority for the exemption. The respondent must submit all attachments. Requests to review proprietary information will be handled in accordance with the Mississippi Public Records Act.

Conditions of Solicitation

The release of this RFQ does not constitute an acceptance of any offer, nor does such release in any way obligate the MDMR to execute a contract with any party. The final decision to execute a contract with any party rests solely with the MDMR.

Before preparing the Statement of Qualifications, all respondents should note:

- The MDMR will not be liable for any costs associated with the preparation of the Statement of Qualifications;
- The award of a contract pursuant to this RFQ is contingent upon the favorable evaluation of the SOQ and successful negotiation of agreed upon price; and,
- Contracted parties will be required to assume full responsibility for all specified services and may subcontract only with the express written consent of the MDMR.

Notification of Successful Respondent

Notification will be sent to all respondents by mail and email of the selection of the successful respondent. We will also post the selection of the successful respondent on our website at www.dmr.ms.gov. Work is expected to begin within 15 days of receipt of a fully executed contract.

Governing Law

This solicitation and any resulting contract shall be governed in all respects by the laws of the State of Mississippi and any litigation with respect thereto shall be brought in the courts of Biloxi, Harrison County, Mississippi.

Relationship of Parties

It is expressly understood and agreed that if MDMR enters into a contract with a respondent, it does so based on the purchase of professional services and not based on an employer-employee relationship or a joint venture relationship. For all purposes under any such contract:

- The contractor shall not be deemed in any way, directly or indirectly, expressly, or by implication, to be an employee of MDMR; and,
- Amounts paid to the contractor under a contract will be paid as a gross sum with no withholdings or deductions being made by MDMR for any purpose.

Contract Administration

The contract awarded subsequent to this solicitation shall be administered by the MDMR. All invoices submitted by the contractor for payment of services performed pursuant to the contract shall be submitted as follows:

Erin Gallagher, Procurement Officer
Mississippi Department of Marine Resources
1141 Bayview Avenue
Biloxi, MS 39530

The MDMR will provide timely payment for services in accordance with Section 31-7-305 of the Mississippi Code Annotated, which generally provides for payment by the MDMR within forty-five (45) days of receipt of the invoice.

Compensation for Services

Compensation for services will be in the form of a flat rate. The Contractor understands and agrees that MDMR is exempt from the payment of taxes.

Equal Opportunity Statement

MDMR will select the respondent for these services without regard to political affiliation, race, color, handicap, genetic information, religion, national origin, sex, religious creed, age, or disability.

Attachments

The attachments to this RFQ are made a part of this RFQ as if copied herein in words and figures and include:

- Attachment A – SOQ Cover Sheet (including Resume(s), Certificate of Good Standing, if applicable, and Two Examples of Authored Plans)
- Attachment B – Contract Clauses

ATTACHMENT A

SOQ Cover Sheet

Please complete and sign this sheet and attach to the front of your SOQ. Incomplete or unsigned SOQs may be rejected.

Respondent's Name:

Address/Principal Place of Business:

Address/Place of Performance of Proposed Contract:

Phone Number: _____

Fax Number: _____

Respondent's Email: _____

If business or firm, Contact Person, Phone Number, and Email:

This is to certify that the respondent submitting this SOQ has been in business

since _____ (date).

Please provide a minimum of two prior projects of comparable scope and complexity:
(Date Completed, Description of Scope, Location, Timeframe for Completion, and
Reference Person):

1. Project:

a. Date Completed: _____

b. Description of
Scope: _____

- c. Location: _____
 - d. Timeframe for Completion: _____
 - e. Reference Name (customer): _____
 - i. Telephone: _____
 - ii. Email: _____
 - iii. Job Title: _____
2. Project:
- a. Date Completed: _____
 - b. Description of Scope: _____
 - c. Location: _____
 - d. Timeframe for Completion: _____
 - e. Reference Name (customer): _____
 - i. Telephone: _____
 - ii. Email: _____
 - iii. Job Title: _____

NOTE: PLEASE USE A SUPPLEMENTAL SHEET TO LIST ADDITIONAL PROJECTS, IF DESIRED AND TO DISCUSS SCOPE OF PROJECTS LISTED ABOVE.

References:

Please attach a listing of at least two (2) additional professional references. These references should be familiar with the respondent's abilities in the areas involved with this solicitation. The list must include the name and telephone number of each reference. Please provide current contact information as MDMR must be able to contact these references immediately following the SOQ opening.

- 1. Reference Name: _____
 - a. Telephone: _____
 - b. Email: _____
 - c. Job Title: _____
 - d. Professional Relationship: _____
- 2. Reference Name: _____

- a. Telephone: _____
- b. Email: _____
- c. Job Title: _____
- d. Professional Relationship: _____

Resumes:

Please attach a resume for each person who will be assigned to provide the required services listing the education, abilities, qualifications and experience of each person.

Certificate of Good Standing:

If respondent is a domestic business entity, other than a sole-proprietorship, please attach a Certificate of Good Standing from the Mississippi Secretary of State. All foreign business entities, other than sole-proprietorships, MAY be required to register with the Mississippi Secretary of State prior to a contract being executed.

Examples of Authored Plans:

Please attach a copy of two examples of authored plans for programs of similar size and complexity to demonstrate technical capability.

By signing below, you certify the following:

1. **Contingent Fees.** Have you promised compensation to any person to solicit or secure this state Contractor contract?
 - ☐ Yes
 - ☐ No

If you checked yes, please explain:

2. **Gratuities.** You represent that you have not violated, are not violating, and promise not to violate the prohibition against gratuities set forth in Section 6-204 of the *Mississippi Personal Service Contract Review Board Rules and Regulations* which may be found at <http://www.mspb.ms.gov>.

3. **Amendments.** You acknowledge all amendments, if any, to this RFQ. Please list amendments acknowledged by number and date.

4. That you have thoroughly read and understand the RFQ and Attachments, and that you agree to all provisions of the RFQ and Attachments including, but not limited to the clauses contained in Attachment B which will be included in any contract resulting from this RFQ.

Please accept this as my/our Statement of Qualifications pursuant to RFx No. *3140000546/Smart No. 1450-16-R-RFQI-0008 issued by the MDMR on April 15, 2016.

SIGNED BY: _____

TITLE: _____

DATE: _____

ATTACHMENT B

Any contract entered into pursuant to this RFQ will contain the following clauses, and may contain other clauses. Any reference to “he”, “his” or “himself” also includes “she”, “her” or “herself”.

Availability of Funds

It is expressly understood and agreed that the obligation of the MDMR to proceed under this agreement is conditioned upon the appropriation of funds by the Mississippi State Legislature and the receipt of state and/or federal funds. If the funds anticipated for the continuing fulfillment of the agreement are, at any time, not forthcoming or insufficient, either through the failure of the federal government to provide funds or of the State of Mississippi to appropriate funds or the discontinuance or material alteration of the program under which funds were provided or if funds are not otherwise available to the MDMR, the MDMR shall have the right upon ten (10) working days’ notice to Contractor, to terminate this agreement without damage, penalty, cost or expenses to the MDMR of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.

Compliance with Laws

Contractor understand that the MDMR is an equal opportunity employer and, therefore, maintains a policy which prohibits unlawful discrimination based on race, color, creed, sex, age, national origin, physical handicap, disability, genetic information, or any other consideration made unlawful by federal, state, or local laws. All such discrimination is unlawful and Contractor agrees during the term of the agreement that Contractor will strictly adhere to this policy in his employment practices and provision of services. Contractor shall comply with, and all activities under this agreement shall be subject to, all applicable federal, State of Mississippi, and local laws and regulations, as now existing and as may be amended or modified.

Certifications

Representation Regarding Gratuities. The Contractor represents that he has not violated, is not violating, and promises that he will not violate the prohibition against gratuities set forth in Section 7-204 (Gratuities) of the Mississippi Personal Service Contract Review Board Rules and Regulations.

Representation Regarding Contingent Fees. The Contractor represents that he has not retained a person to solicit or secure a State contract, including this State contract, upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee.

Confidentiality

The Contractor must not, either during the service prior or at any time thereafter, directly or indirectly, use or disclose to any person any confidential information provided; however, that nothing in this section precludes the Contractor from disclosing or using Confidential Information if:

- A. The Confidential Information is available to the public or in the public domain at the time of such disclosure or use;
- B. Disclosure of the Confidential Information is required to be made by any law, regulation, governmental authority or court; or,
- C. The Confidential Information was received by the Contractor after termination of the service period from a third party that had a lawful right to disclose it to the Contractor.

Contractor must not disclose or discuss the contents of any personnel file except to MDMR personnel that are authorized to receive and review such information.

Transparency

This contract, including any accompanying exhibits, attachments, and appendices, is subject to the “Mississippi Public Records Act of 1983,” and its exceptions. See Miss. Code Ann. §§ 25-61-1 *et seq.* (1972, as amended) and Miss. Code Ann. § 79-23-1 (1972, as amended). In addition, this contract is subject to the provisions of the Mississippi Accountability and Transparency Act of 2008, Miss. Code Ann. §§ 27-104-151 *et seq.* (1972, as amended). Unless exempted from disclosure due to a court-issued protective order, a copy of this executed contract is required to be posted to the Department of Finance and Administration’s independent agency contract website for public access at <http://www.transparency.mississippi.gov>. Information identified by Contractor as trade secrets, or other proprietary information, including confidential vendor information or any other information which is required to be kept confidential by state or federal law or outside the applicable freedom of information statutes, will be redacted. In the event the MDMR receives a public records request for documents containing information identified by the Contractor as trade secrets or proprietary information, the MDMR will notify the Contractor who will be given a reasonable time to obtain a court order protecting the information. See Mississippi Code Annotated § 25-61-9(1).

Trade Secrets, Commercial and Financial Information

It is expressly understood that Mississippi law requires that the provisions of this contract which contain the commodities purchased or the personal or professional services provided, the price to be paid, and the term of the contract shall not be deemed to be a trade secret or confidential commercial or financial information and shall be available for examination, copying, or reproduction.

Severability

Each provision of this contract must be interpreted in a way that is valid under applicable law. If any provision is held invalid, the rest of the Contract will remain in full effect.

Changes

This contract shall not be modified, altered, or changed except by the mutual agreement by an authorized representative of each party to this contract and must be confirmed in writing through the MDMR.

Oral Statements

No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in this agreement. All modifications to this contract must be made in writing by the MDMR.

Applicable Law

This contract shall be governed by and construed in accordance with laws of the State of Mississippi, excluding its conflicts laws provisions, and any litigation with respect thereto shall be brought in the courts of the State. Contractor shall comply with applicable federal, state and local laws and regulations.

Procurement Regulations

The contract shall be governed by the applicable provisions of the *Mississippi Personal Service Contract Review Board Rules and Regulations*, a copy of which is available at 210 Capitol Street, Jackson, Mississippi, for inspection, or downloadable at www.mspsb.ms.gov.

Acknowledgement

The Contractor acknowledges that he:

- A. Has had sufficient time to review and consider the contract thoroughly;
- B. Has read and understands the terms and scope of this contract and his obligations hereunder; and,
- C. Has been given an opportunity to obtain independent legal advice, or such other advice as he may desire concerning the interpretation and effect of this contract.

Paymode

Payments by state agencies using the Statewide accounting system shall be made and remittance information provided electronically as directed by the State. These payments shall be deposited into the bank account of the Contractor's choice. The State may, at its sole discretion, require the Contractor to submit invoices and supporting documentation electronically at any time during the term of this Contract. Contractor understands and agrees that the State is exempt from the payment of taxes. All payments shall be in United States currency.

E-Payment

Contractor agrees to accept all payments in United States currency via the State of Mississippi's electronic payment and remittance vehicle. The MDMR agrees to make payment in accordance with Mississippi law on "Timely Payments for Purchases by Public Bodies," which generally provides for payment of undisputed amounts by the MDMR within forty-five (45) days of receipt of invoice. Miss. Code Ann. § 31-7-305.

E-Verify Program

Contractor represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act (Miss. Code Ann. § 71-11-1 *et seq.*) and will register and participate in the status verification system for all newly hired employees. The term "employee" as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, "status verification system" means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program. Contractor agrees to maintain records of each such compliance and, upon request of the MDMR, to provide a copy of each such verification to the MDMR.

Contractor further represents and warrants that any person assigned to perform services hereunder meets the employment eligibility requirements of all immigration

laws. Contractor understands and agrees that any breach of these warranties may subject Contractor to the following: (a) termination of this contract and ineligibility for any state or public contract in Mississippi for up to three (3) years, with notice of such cancellation/termination being made public; (b) the loss of any license, permit, certification or other document granted to Contractor by an agency, department or government entity for the right to do business in Mississippi for up to one (1) year; or, (c) both. In the event of such termination/cancellation, Contractor would also be liable for any additional costs incurred by the MDMR due to contract cancellation or loss of license or permit.

Stop Work Order

Order to Stop Work

The MDMR, may, by written order to the Contractor at any time, and without notice to any surety, require the Contractor to stop all work or any part of the work called for by this contract. This order shall be for a specified period not exceeding 90 days after the order is delivered to the Contractor, unless the parties agree to any further period. Any such order shall be identified specifically as a stop work order issued pursuant to this clause.

Upon receipt of such an order, the Contractor shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the work covered by the order during the period of work stoppage. Before the stop work order expires, or within any further period to which the parties shall have agreed, the MDMR shall either:

- (a) cancel the stop work order; or,
- (b) terminate the work covered by such order as provided in the “Termination for Default Clause” or the “Termination for Convenience Clause” of this contract.

Cancellation or Expiration of the Order

If a stop work order issued under this clause is cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the Contractor shall have the right to resume work. An appropriate adjustment shall be made in the delivery schedule or Contractor’s price, or both, and the contract shall be modified in writing accordingly, if:

- (a) the stop work order results in an increase in the time required for, or in the Contractor’s cost properly allocable to, the performance of any part of this contract; and,

(b) the Contractor asserts a claim for such an adjustment within 30 days after the end of the period of work stoppage; provided that, if the MDMR decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this contract.

Termination of Stopped Work

If a stop work order is not cancelled and the work covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop work order shall be allowed by adjustment or otherwise.

Termination for Convenience Clause

- (1) *Termination.* The Agency Head or designee may, when the interest of the State so require, terminate this contract in whole or in part, for the convenience of the State. The Agency Head or designee shall give written notice of the termination to Contractor specifying the part of the contract terminated and when termination becomes effective.
- (2) *Contractor's Obligations.* Contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination Contractor will stop work to the extent specified. Contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The Agency Head or designee may direct Contractor to assign Contractor's right, title, and interest under terminated orders or subcontracts to the State. Contractor must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

Termination for Default Clause

- (1) *Default.* If Contractor refuses or fails to perform any of the provisions of this contract with such diligence as will ensure its completion within the time specified in this contract or any extension thereof, or otherwise fails to timely satisfy the contract provisions, or commits any other substantial breach of this contract, the Agency Head or designee may notify Contractor in writing of the delay or nonperformance and if not cured in ten (10) days or any longer time specified in writing by the Agency Head or designee, such officer may terminate Contractor's right to proceed with the contract or such part of the contract as to which there has been delay or a failure to properly perform. In the event of

termination in whole or in part, the Agency Head or designed may procure similar supplies or services in a manner and upon terms deemed appropriate by the Agency Head or designee. Contractor shall continue performance of the contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.

- (2) *Contractor's Duties.* Notwithstanding termination of the contract and subject to any directions from the procurement officer, Contractor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of Contractor in which the State has an interest.
- (3) *Compensation.* Payment for completed services delivered and accepted by the State shall be at the contract price. The State may withhold from amounts due Contractor such sums as the Agency Head or designee deems to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders and to reimburse the State for the excess costs incurred in procuring similar goods and services.
- (4) *Excuse for Nonperformance or Delayed Performance.* Except with respect to defaults of subcontractors, Contractor shall not be in default by reason of any failure in performance of this contract in accordance with its terms (including any failure by Contractor to make progress in the prosecution of the work hereunder which endangers such performance) if Contractor has notified the Agency Head or designee within 15 days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of the public enemy; acts of the State and any other governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, Contractor shall not be deemed to be in default, unless the services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit Contractor to meet the contract requirements. Upon request of Contractor, the Agency Head or designee shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, Contractor's progress and performance would have met the terms of the contract, the delivery schedule shall be revised accordingly, subject to the rights of the State under the clause entitled (in fixed-price contracts, "Termination for Convenience," in cost-reimbursement contracts,

“Termination”). (As used in this paragraph of this clause, the term “subcontractor” means subcontractor at any tier.)

(5) *Erroneous Termination for Default.* If after notice of termination of Contractor’s right to proceed under the provisions of this clause, it is determined for any reason that the contract was not in default under the provisions of this clause, or that the delay was excusable under the provisions of paragraph (4) (Excuse for Nonperformance or Delayed Performance) of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the State, be the same as if the notice of termination had been issued pursuant to such clause.

(6) *Additional Rights and Remedies.* The rights and remedies provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

Termination Upon Bankruptcy

This contract may be terminated in whole or in part by the MDMR upon written notice to Contractor, if Contractor should become the subject of bankruptcy or receivership proceedings, whether voluntary or involuntary, or upon the execution by Contractor of an assignment for the benefit of its creditors. In the event such termination, Contractor shall be entitled to recover just and equitable compensation for satisfactory work performed under this contract, but in no case shall said compensation exceed the total contract price.

ADDITIONAL TERMS AND CLAUSES

Attorneys' Fees and Expenses

Subject to other terms and conditions of this agreement, in the event the Contractor defaults in any obligations under this agreement, the Contractor shall pay to the MDMR all costs and expenses (including, without limitation, investigative fees, court costs, and attorneys' fees) incurred by the MDMR in enforcing this agreement or otherwise reasonably related thereto. Contractor agrees that under no circumstances shall the MDMR be obligated to pay any attorneys' fees or costs of legal action to the Contractor.

Authority to Contract

The Contractor warrants: (a) that it is a validly organized business with valid authority to enter into this agreement; (b) that it is qualified to do business and in good standing in the State of Mississippi; (c) that entry into and performance under this contract is not restricted or prohibited by any loan, security, financing, contractual, or other agreement of

any kind; and (d) notwithstanding any other provision of this contract to the contrary, that there are no existing legal proceeding or prospective legal proceedings, either voluntary or otherwise, which may adversely affect its ability to perform its obligations under this contract.

Indemnification

To the fullest extent allowed by law, the Contractor shall indemnify, defend, save and hold harmless, protect, and exonerate the MDMR, its commissioners, board members, officers, employees, agents, and representatives, and the State of Mississippi from and against all claims, demands, liabilities, suits, actions, damages, losses, and costs of every kind and nature whatsoever, including, without limitation, court costs, investigative fees and expenses, and attorney's fees arising out of or caused by the Contractor and/or its partners, principals, agents, employees and/or subcontractors in the performance of or failure to perform this agreement. In the State's sole discretion, the Contractor may be allowed to control the defense of any such claim, suit, etc. In the event the Contractor defends said claim, suit, etc., the Contractor shall use legal counsel acceptable to the State; the Contractor shall be solely responsible for all costs and/or expenses associated with such defense, and the MDMR shall be entitled to participate in said defense. The Contractor shall not settle any claim, suit, etc. without the State's concurrence, which the State shall not unreasonable withhold.

Personnel

MDMR shall, throughout the life of the contract, have the right of reasonable rejection and approval of staff or subcontractors assigned to the work under the contract by the Contractor. If the MDMR reasonably rejects staff or subcontractor, the Contractor must provide replacement staff or subcontractors satisfactory to the MDMR in a timely manner and at no additional cost to the MDMR. The day-to-day supervision and control of the Contractor's employees and subcontractors is the sole responsibility of the Contractor.

Change in Scope of Work

The MDMR may order changes in the work under the contract consisting of additions, deletions, or other revisions within the general scope of the contract. No claims may be made by the Contractor that the scope of the project or of the Contractor's services has been changed requiring changes to the amount of compensation to the Contractor or other adjustments to the contract, unless such changes or adjustments have been made by written amendment to the contract signed by the MDMR and the Contractor and approved by the PSCRB, if necessary.

Failure to Enforce

Failure by the MDMR at any time to enforce the provisions of the contract shall not be construed as a waiver of any such provisions. Such failure to enforce shall not affect the validity of the contract or any part thereof or the right of the MDMR to enforce any provision at any time in accordance with its terms.

Independent Contractor Status

The Contractor shall, at all times, be regarded as an independent contractor and shall at no time act as an agent for the MDMR. Nothing contained herein shall be deemed or construed by the MDMR, the Contractor, or any third party as creating the relationship of principal and agent, master and servant, partners, joint venturers, employer and employee, or any similar such relationship between the MDMR and the Contractor. Neither the method of computation of fees or other charges, nor any other provision contained herein, nor any acts of the MDMR or the Contractor hereunder, create or shall be deemed to create a relationship other than the independent relationship of the MDMR and the Contractor. Contractor's personnel shall not be deemed in any way, directly or indirectly, expressly or by implication, to be employees of the MDMR. Neither the Contractor nor its employees shall, under any circumstances, be considered servants, agents or employees of the MDMR; and the MDMR shall be at no time legally responsible for any negligence or other wrongdoing by the Contractor, its servants, agents, or employees. MDMR shall not withhold from the contract payments to the Contractor any federal or state unemployment taxes, federal or state income taxes, Social Security tax, or any other amounts for benefits to the Contractor. Further, the MDMR shall not provide to the Contractor any insurance coverage or other benefits, including Workers' Compensation, normally provided by the State to its employees.

Notices

All notices required or permitted to be given under this agreement must be in writing and personally delivered or sent by Certified United States mail, postage prepaid, return receipt requested, to the party to whom the notice should be given at the address set forth below. Notice shall be deemed given when actually received or when refused. The parties agree to promptly notify each other in writing of any change of address.

For the Contractor: name, title, address

For the MDMR: Erin Gallagher, Procurement Officer

Mississippi Department of Marine Resources

1141 Bayview Avenue

Biloxi MS 39530

Record Retention and Access to Records

Provided the Contractor is given reasonable advance written notice and such inspection is made during normal business hours of the Contractor, the MDMR or any duly authorized representatives, shall have unimpeded, prompt access to any of the Contractor's books, documents, papers, and/or records which are maintained or produced as a result of the Contract for the purpose of making audits, examination, excerpts, and transcriptions. All records related to this Contract shall be retained by the Contractor for three (3) years after final payment is made under this Contract and all pending matters are closed. However, if any audit, litigation or other action arising out of or related in any way to this Contract is commenced before the end of the three (3) year period, the records shall be retained for one (1) year after all issues arising out of the action are finally resolved or until the end of the three (3) year period, whichever is later.

Recovery of Money

Whenever, under the contract, any sum of money shall be recoverable from or payable by the Contractor to the MDMR, the same amount may be deducted from any sum due to the Contractor under the contract or under any other contract between the Contractor and the MDMR. The rights of MDMR are in addition and without prejudice to any other right the MDMR may have to claim the amount of any loss or damage suffered by the MDMR on account of the acts or omissions of the Contractor.

Third Party Action Notification

Contractor shall give the MDMR prompt notice in writing of any action or suit filed, and prompt notice of any claim made against Contractor by any entity that may result in litigation related in any way to this Contract.

Unsatisfactory Work

If at any time during the contract term, the service performed or work done by the Contractor is considered by the MDMR to create a condition that threatens the health, safety, or welfare of the citizens and/or employees of the State of Mississippi, the Contractor shall, on being notified by the MDMR, immediately correct such deficient service or work. In the event the Contractor fails, after notice, to correct the deficient

service or work immediately, the MDMR shall have the right to order the correction of the deficiency by separate contract or with its own resources at the expense of the Contractor.

Waiver

No delay or omission by either party to this agreement in exercising any right, power, or remedy hereunder or otherwise afforded by the contract, at law, or in equity shall constitute an acquiescence therein, impair any other right, power or remedy hereunder or otherwise afforded by any means, or operate as a waiver of such right, power, or remedy. No waiver by either party to this agreement shall be valid unless set forth in writing by the party making said waiver. No waiver or modification to any term or condition of this agreement will void, waive, or change any other term or condition. No waiver by one party to this agreement of a default by the other party will imply, be construed as or require waiver of future or other defaults.